

REMARKS

The Office Action dated December 30, 2003, indicated as being "FINAL" has been reviewed in detail and the application has been amended in the sincere effort to place the same in condition for allowance. Reconsideration of the claims of the application and allowance in their amended form are requested based on the following remarks.

Applicant retains the right to pursue broader claims under 35 U.S.C. §120.

Applicant has provided a unique solution with respect to problems regarding BOTTLING PLANT AND METHOD OF OPERATING A BOTTLING PLANT AND A BOTTLING PLANT WITH SECTIONS FOR STABILIZING THE BOTTLED PRODUCT. Applicant's solution is now claimed in a manner that satisfies the requirements of 35 U.S.C. §103.

New Issues:

It is submitted that no new issues have been raised by this amendment and that the amendments to the claims have correspondence to limitations in the claims presently on file and have

been made in accordance with the agreement reached in the telephonic interview discussed below.

Telephonic Interview:

The undersigned would like to sincerely thank Supervisory Examiner Eugene Kim and Examiner Sameh Tawfik for the courtesies extended during a telephonic interview between the Examiners and the undersigned on June 24, 2004. During the telephonic interview, proposed independent Claim "A" was primarily discussed in view of the applied prior art.

An agreement was reached between the Examiners and the undersigned that the language of proposed claim "A" could be added to the independent claims on file so as to render such claims allowable over the applied art. Particularly, it was agreed that the following language would be sufficient to render the independent claims allowable:

"each of said plurality of spray arrangements comprising a spray nozzle being configured to spray a stream of liquid;

each of said spray nozzles being disposed integrally within said roof arrangement;"

Accordingly, Claims 19, 31, and 37 have been amended herein

to include the above agreed-upon language, and it is therefore submitted that independent Claims 19, 31, and 37, as well as the claims depending respectively from these claims, are now allowable.

In addition, it was agreed that the present amendment, if timely filed before the expiration date of June 30, 2004 of the six-month period from the mailing date of the outstanding Final Rejection Office Action, would be considered and entered, and that the application would be allowed after that date and not be abandoned as of that date.

The telephonic interview is further summarized below in the section entitled "Recordation of the Substance of the Telephonic Interview."

Rejection of Claims 19, 23, 31, 35, 37 and 41 Under 35 U.S.C.

§103:

Claims 19, 23, 31, 35, 37 and 41 were rejected under 35 U.S.C. §103 as being unpatentable over Pesente, U.S. 5,012,727, in view of Wijts, U.S. 4,773,321. Generally, the Examiner stated that Pesente showed all of the claimed structure of the present invention except "a housing comprising a roof arrangement" and "the roof being configured to receive the plurality of spray arrangements." The Examiner further

states on pages 2-3 of the Office Action:

However, Wijts discloses a similar product stabilizing section comprising a housing comprising a roof arrangement and the roof being configured to receive the plurality of spray arrangements disposed integrally in the roof arrangement and comprises a single cover arrangement and disposed above the plurality of spray arrangements and configured to cover substantially all of the spray arrangements; the roof arrangements has a length and a width (Figs. 1 and 2; via chamber 18), note that the examiner consider only the spraying section inside chamber 18 as spraying means.

As understood, Pesente discloses an apparatus for the control of a pasteurizing process. In general, Pesente shows a number of sprayers 3, 4, 5, 6 that spray water at different temperatures to pasteurize a product in bottles 1. Specifically, Pesente discloses that if the bottles 1 are stopped in case of emergency, the bottles 1 being sprayed by the highest temperature water are automatically sprayed with a lower temperature water until the emergency is over. Each of the sprayers 3, 4, 5, 6 are individually suspended above the bottles 1.

1. As stated by the Examiner, Pesente does not show a roof arrangement for the pasteurizing area.

Wijts, as understood, shows a sterilizing system for sterilizing food or pharmaceutical products. During operation, the products are transported through a cylindrical sterilizing chamber 18. Inside the chamber 18 processing fluids such as water, air, and/or steam are

released onto the products to sterilize them. The processing fluids are released from T-shaped pipe structures, as can be seen in Figure 2, that are suspended a distance from the upper surface of the chamber 18.

In contrast to both Pesente and Wijts as discussed in the telephonic interview of June 24, 2004, amended Claim 19 recites the following:

"each of said plurality of spray arrangements comprising a spray nozzle being configured to spray a stream of liquid;
each of said spray nozzles being disposed integrally within said roof arrangement."

Also in contrast to both Pesente and Wijts, amended Claim 19 recites "a housing comprising a roof arrangement" and "a plurality of spray arrangements being disposed integrally in said roof arrangement." As stated above and by the Examiner, Pesente does not show a housing comprising a roof arrangement. Wijts shows an enclosed cylindrical housing with pipe structures that release a fluid to sterilize the products. However, these pipe structures are not disposed integrally in the cylindrical housing 18. The cross portion of

the T-shaped pipe is suspended a distance from the cylindrical housing 18, as can be clearly seen in Figure 2. The vertical fluid supply pipes go through the cylindrical housing 18 (see Figures 1 and 2), but are not disposed integrally in the cylindrical housing 18.

In addition, it is respectfully submitted that the Wijts reference is non-analogous art with respect to Pesente. Pesente discloses a process and apparatus for pasteurization of a product, such as a bottled beverage. Wijts, on the other hand, discloses a process and apparatus for sterilization of a food or pharmaceutical product. These two processes are very different in that pasteurization requires gradual heating and cooling at specific temperatures in order to kill off harmful bacteria without damaging the quality of the beverage, whereas, sterilization seeks to kill all bacteria by heating the product at substantially high temperatures. The temperatures used in sterilization are much higher than those used in pasteurization. If such high temperatures were used in pasteurization, the beverage product, such as beer or milk, would be adversely affected. The beer and milk subjected to such high temperatures would have a boiled flavor that has been found to be undesirable to consumers. Along the same lines, sterilization could not be effectively conducted at the

lower temperatures used in pasteurization as some bacteria might survive the exposure to the lower temperatures. Sterilization seeks to destroy all bacteria, so higher temperatures are necessary.

In view of the above, it is respectfully submitted that a person of ordinary skill in the art of beverage pasteurization would not look to a patent in the art of sterilization for information on pasteurization systems. It is much more likely that a person of ordinary skill in the art of beverage pasteurization would look to patents or publications relating to beverage pasteurization for information on pasteurization systems. It is respectfully submitted that sterilization systems or methods would be largely ignored by a person of ordinary skill in the art of beverage pasteurization because the process and apparatus of sterilization achieve near total destruction of bacteria at high temperatures, which is contrary to what is employed in beverage pasteurization. It is therefore respectfully submitted that Wijts is a non-analogous reference with respect to Pesente, thus rendering the combination of the two references improper.

Further, the Examiner states in the outstanding Office Action that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the pasteurization system

of Pesente to have the cylindrical housing of Wijts to house the sprayers of Pesente in order to protect the pasteurization system from the outside atmosphere. However, the Examiner does not point out any passage in the Pesente reference which would indicate the desirability of adopting the cylindrical housing of the sterilization system of Wijts in the pasteurization system of Pesente. Likewise, the Examiner also does not point out any passage in the Wijts reference which would indicate the desirability, or the utility, of using the cylindrical housing for the sterilization system in the pasteurization system. In this regard, it is important to note the decision of the Court of Appeals, Federal Circuit (CAFC) in its opinion in In re Howard Sernaker, 702 F. 2d 989, wherein, a Patent and Trademark Board of Appeal affirmation of an Examiner's rejection under 35 U.S.C. §103, based on a combination of references, was overturned.

In Sernaker, the invention involved related to a method for producing embroidered "emblems" which closely resembled emblems of the prior art embroidered with different colored thread. In the claims on appeal, a sculptured embroidery was produced from a single colored thread (e.g., white); a heat-transferable transfer print (e.g., a decal) was provided; the sculptured embroidery and the transfer print

were mated and aligned; and color was transferred from the print to the embroidery by the application of heat.

Sculptured one-color embroideries were known in the prior art, as was the heat transferable printing process. However, the CAFC held the claims on appeal nonobvious, stating the relevant tests to be:

"(a) whether a combination of the teachings of all or any of the references would have suggested (expressly or by implication) the possibility of achieving further improvement by combining such teachings along the line of the invention in suit, and

(b) whether the claimed invention achieved more than a combination which any or all of the prior art references suggested, expressly or by reasonable combination."

The CAFC recognized that the separate elements of the white sculptured embroidery and the heat-transferable dyeing process existed in the prior art. However, they pointed to the absence, in the references themselves or in the prior art general knowledge as a whole, of any recognition or suggestion that further improvements could be achieved by combining these known elements in the manner taught and claimed in the application (e.g., in a mated and aligned fashion).

It is believed that the decision of Sernaker is applicable in the present application, as there is nothing in either of the two references

which teaches or suggests that the references be combined.

Further, since there is nothing in the applied references to teach that they be combined, it is also submitted that the only motivation to combine the applied references is the present disclosure itself, and such hindsight analysis of the available art is considered improper. At this juncture, Applicants wish to point out the decision in another court case which is considered to be relevant to the prosecution of the instant application.

In In re Deminski, 230 USPQ 313 (1986), the CAFC overturned a decision of the Board of Patent Appeals and Interferences regarding obviousness of the invention in view of prior references. In In re Deminski, the Board upheld the Examiner's rejection of Claims 17, 18 and 21 in view of obviousness over the prior art. These claims have the limitation that the valve sets in the valve chambers be connected to permit withdrawal as a unit. The Board argued that if the Pocock reference would have attached the valve stem to the valve structure, the valve assembly would have been removable as a unit. The CAFC found nothing in the references to "suggest the desirability, and thus the obviousness" of designing the valve assembly to be removable, and stated that "the only way the board could have arrived at its

conclusion was through hindsight analysis by reading into the art Deminski's own teachings. Hindsight analysis is clearly improper, since the statutory test is whether the subject matter as a whole would have been obvious at the time the invention was made."

In view of the above decision in In re Deminski, it is submitted that, only upon a reading of the specification of the present application that one would have possibly been motivated to provide the pasteurization system of Pesente with the cylindrical housing for the sterilization system of Wijts.

Further, even if, for the sake of argument purposes only, the Pesente and Wijts references could somehow be combined, it would appear that significant portions of the Pesente device would have to be destroyed, or at least compromised, in order to arrive at the present invention as defined by Claim 19. In this regard, it is respectfully submitted that it is extremely unclear as to how the cylindrical housing of Wijts could be incorporated into the pasteurization system of Pesente.

In view of the above, it is submitted that Claim 19 fully distinguishes over Pesente and Wijts, either taken singly or in any reasonable combination thereof, and is therefore believed to be

allowable.

Claims 20-23, 25, and 26 are also believed to be allowable over the applied references based on their dependence from Claim 19.

Claim 31, which is very similar to Claim 19, is also believed to distinguish over Pesente and Wijts. Claim 31 also recites:

"each of said plurality of spray arrangements comprising a spray nozzle being configured to spray a stream of liquid;
each of said spray nozzles being disposed integrally within said roof arrangement."

Claim 31 is therefore believed to fully distinguish over Pesente and Wijts, either taken singly or in any reasonable combination thereof, and is therefore believed to be allowable.

Claims 32-36 are also believed to be allowable over the applied references based on their dependence from Claim 31.

Claim 37, which is very similar to Claim 19, is also believed to distinguish over Pesente and Wijts. Claim 37 also recites:

"each of said plurality of spray arrangements comprising a spray nozzle being configured to spray a stream of liquid;
each of said spray nozzles being disposed integrally within said roof arrangement."

Claim 37 is therefore believed to fully distinguish over Pesente and Wijts, either taken singly or in any reasonable combination thereof, and is therefore believed to be allowable.

Claims 38-43 are also believed to be allowable over the applied references based on their dependence from Claim 37.

In view of the above, reconsideration and withdrawal of the present rejection is respectfully requested.

Recordation of the Substance of the Telephonic Interview:

In order to render this Amendment complete, the following is a recordation of the substance of the telephonic interview conducted with Examiners Kim and Tawfik on June 24, 2004:

- 1) No exhibits were shown, nor were any demonstrations conducted.
- 2) Primarily, proposed independent claim "A" was discussed.
- 3) Primarily, the prior art discussed was U.S. Patent Nos. 5,012,727 to Pesente and 4,773,321 to Wijts.
- 4) Applicant's representative essentially proposed to amend the independent claims currently on file in the manner set forth in this Amendment.
- 5) Generally, Applicant's representative submitted, *inter alia*,

that the prior art discussed did not teach nor suggest "each of said plurality of spray arrangements comprising a spray nozzle being configured to spray a stream of liquid" and "each of said spray nozzles being disposed integrally within said roof arrangement."

- 6) Generally no other pertinent matters were discussed.
- 7) The general outcome of the interview was an agreement between the Examiners and the Applicant's representative that the independent claims on file be amended to include the agreed-upon language from proposed claim "A" to place those claims in condition for allowance. Independent Claims 19, 31, and 37 have been amended herein in accordance with this agreement.

Art Made of Record:

The prior art made of record and not applied has been carefully reviewed, and it is submitted that it does not, either taken singly or in any reasonable combination with the other prior art of record, defeat the patentability of the present invention or render the present invention obvious. Further, Applicant is in agreement with the Examiner that the prior art made of record and not applied does not appear to be material to the patentability of the claims currently pending in this application.

In view of the above, it is respectfully submitted that this application is in condition for allowance, and early action towards that end is respectfully requested.

Summary and Conclusion:

It is submitted that Applicant has provided a new and unique BOTTLING PLANT AND METHOD OF OPERATING A BOTTLING PLANT AND A BOTTLING PLANT WITH SECTIONS FOR STABILIZING THE BOTTLED PRODUCT. It is submitted that the claims, as amended, are fully distinguishable from the prior art. Therefore, it is requested that a Notice of Allowance be issued at an early date.

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Respectfully submitted,



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